

**AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE
AND GENERAL UTILITY EASEMENT
TO
ROCKY MOUNTAIN POWER**

WHEREAS, Rocky Mountain Power, is a regulated public utility that provides electric power and energy to the citizens of Newton Town (the “Town”) and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the Town;

WHEREAS, the Town, pursuant to the provisions of Utah Code Ann. § 10-8-21 has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a general utility easement for the use thereof;

WHEREAS, the Town desires to set forth the terms and conditions by which Rocky Mountain Power shall use the public ways of the Town;

NOW, THEREFORE, be it ordained by the Town:

SECTION 1. Grant of Franchise and General Utility Easement. The Town hereby grants to Rocky Mountain Power the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “Public Ways”) within the Town, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the Town and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for fifteen (15) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by Company. Within sixty (60) days after the passage of this ordinance by the Town, Rocky Mountain Power shall file an unqualified written acceptance thereof, with the Town Recorder otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the Town shall be nonexclusive and the Town reserves the right to use the Public Ways for itself or any other entity that provides service to Town residences; provided, however, that such use shall

not unreasonably interfere with Rocky Mountain Power's Electric Facilities or Rocky Mountain Power's rights as granted herein.

SECTION 5. Town Regulatory Authority. In addition to the provision herein contained, the Town reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or Town Ordinance.

SECTION 6. Indemnification. The Town shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by Rocky Mountain Power of its Electric Facilities. Rocky Mountain Power shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Rocky Mountain Power's use of the Public Ways within the Town, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The Town shall: (a) give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (b) permit Rocky Mountain Power to assume the defense of such claim, demand, or lien. If such defense is not assumed by Rocky Mountain Power, Rocky Mountain Power shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, Rocky Mountain Power shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the Town or any of its officers or employees.

SECTION 7. Annexation.

7.1 Extension of Town Limits. Upon the annexation of any territory to the Town, the rights granted herein shall extend to the annexed territory to the extent the Town has such authority. All Electrical Facilities owned, maintained, or operated by Rocky Mountain Power located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2 Notice of Annexation. When any territory is approved for annexation to the Town, the Town shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to Rocky Mountain Power: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the Town's ordinance approving the proposed annexation. The notice shall be mailed to:

Rocky Mountain Power Customer Contact Center
Attn: Annexations
P.O. Box 400
Portland, Oregon 97207-0400

With a copy to:

Rocky Mountain Power
Attn: Office of the General Counsel
1407 West North Temple, Room 320
Salt Lake Town, UT 84116

SECTION 8. Plan, Design, Construction and Installation of Company Facilities.

8.1 All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and town laws, codes and regulations.

8.2 Except in the case of an emergency, Rocky Mountain Power shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the Town which permit shall not be unreasonably withheld, conditioned, or delayed. Rocky Mountain Power will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the Town, and the Town may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Rocky Mountain Power shall not be obligated to obtain a permit to perform emergency repairs.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the Town and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the Town.

8.4 If, during the course of work on its Electrical Facilities, Rocky Mountain Power causes damage to or alters the Public Way or public property, Rocky Mountain Power shall (at its own cost and expense and in a manner reasonably approved by the Town) replace and restore it in as good a condition as existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Rocky Mountain Power shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by Town ordinance.

8.6 The Town shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways for Town wires used in connection with its fire alarms, police signal systems, or other public safety communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the Town for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that Rocky Mountain Power shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the Town shall be in such a manner as to prevent safety hazards or interferences with Rocky Mountain Power's use of same. Nothing herein shall be construed to require Rocky Mountain Power to increase pole size, or alter the

manner in which Rocky Mountain Power attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. Town attachments shall be installed and maintained in accordance with the reasonable requirements of Rocky Mountain Power and the current edition of the National Electrical Safety Code pertaining to such construction. Further, Town attachments shall be attached or installed only after written approval by Rocky Mountain Power in conjunction with Rocky Mountain Power's standard pole attachment application process. Rocky Mountain Power shall have the right to inspect, at the Town's expense, such attachments to ensure compliance with this Section 8.6 and to require the Town to remedy any defective attachments.

8.7 Rocky Mountain Power shall have the right to excavate the Public Rights of Ways subject to reasonable conditions and requirements of the Town. Before installing new underground conduits or replacing existing underground conduits, Rocky Mountain Power shall first notify the Town of such work by written notice and shall allow the Town, at its own expense, (to include a pro rata share of the trenching costs), to share the trench of Rocky Mountain Power to lay its own conduit therein, provided that such action by the Town will not unreasonably interfere with Rocky Mountain Power's Electrical Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect Rocky Mountain Power's Electric Facilities, the Town shall give written notice to Rocky Mountain Power.

SECTION 9. Relocations of Electric Facilities.

9.1 The Town reserves the right to require Rocky Mountain Power to relocate its Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the Town. Within a reasonable period of time after written notice, Rocky Mountain Power shall promptly commence the relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the Town shall, with the assistance and consent of Rocky Mountain Power, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the Town.

The Town shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of Rocky Mountain Power to obtain reimbursement.

9.2 Rocky Mountain Power shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, Rocky Mountain Power may charge the expense of removal or relocation to the developer or customer. For example, Rocky Mountain Power shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition of or caused by a private development.

SECTION 10. Subdivision Plat Notification. Before the Town approves any new subdivision and before recordation of the plat, the Town shall obtain Rocky Mountain Power's approval of

Electrical Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on the plat. A copy of the plat shall be mailed for approval to Rocky Mountain Power:

Rocky Mountain Power
Attn: Estimating Department
780 N. Main St.
Smithfield, Utah 84335

SECTION 11. Vegetation Management. Rocky Mountain Power or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways to prevent the branches or limbs or other part of such trees or vegetation from interfering with Rocky Mountain Power's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Rocky Mountain Power, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 12. Renewal. At least 120 days prior to the expiration of this Franchise, Rocky Mountain Power and the Town either shall agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. Rocky Mountain Power shall have the continued right to use the Public Ways of the Town as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 13. No Waiver. Neither the Town nor Rocky Mountain Power shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 14. Transfer of Franchise. Rocky Mountain Power shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of Rocky Mountain Power which assume all of Rocky Mountain Power's obligations hereunder, unless the Town shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Rocky Mountain Power may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Rocky Mountain Power (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

SECTION 15. Amendment. At any time during the term of this Franchise, the Town through its Town Council, or Rocky Mountain Power may propose amendments to this Franchise by

giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the Town and Rocky Mountain Power and formally adopted as an ordinance amendment, which is accepted in writing by Rocky Mountain Power.

SECTION 16. Notices. Unless otherwise specified herein, all notices from Rocky Mountain Power to the Town pursuant to or concerning this Franchise shall be delivered to the Town Recorder's Office. Unless otherwise specified herein, all notices from the Town to Rocky Mountain Power pursuant to or concerning this Franchise shall be delivered to the Customer Services Vice President, Rocky Mountain Power, 201 South Main, Suite 2400, Salt Lake Town, Utah 84111, and such other office as Rocky Mountain Power may advise the Town of by written notice.

SECTION 17. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 18. Waiver of Jury Trial. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

PASSED by the Town Council of the Town of _____, Utah this ____ day of _____, 2016.

MAYOR

ATTEST:

TOWN RECORDER